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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 110620342-1659-03]

RIN 0648-BA66

International Fisheries; Pacific Tuna Fisheries; Fishing Restrictions in the Eastern Pacific Ocean

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is issuing regulations under the Tuna Conventions Act of 1950, as amended, (Act) to implement decisions of the Inter-American Tropical Tuna Commission (IATTC). At its 82nd Meeting in July 2011, the IATTC adopted a number of resolutions, some of which require rulemaking to implement domestically in the United States. This rule implements three of these decisions: the Resolution on Tuna Conservation 2011-2013 (C-11-01); the Resolution Prohibiting Fishing on Data Buoys (C-11-03); and the Resolution Prohibiting the Retention of Oceanic Whitetip Sharks (C-11-10). This action is necessary for the United States to satisfy its obligations as a member of the IATTC.

DATES: This rule becomes effective on [Insert date 30 days after date of publication in the FEDERAL REGISTER], except for the amendments to § 300.24(m) and (n) and § 300.25(f) which become effective [Insert date of publication in the FEDERAL REGISTER].

ADDRESSES: Copies of the proposed and final rules, Small Business Compliance Guide, and the Regulatory Impact Review for this action are available via the Federal e-Rulemaking portal,

at <http://www.regulations.gov>, and are also available from the Regional Administrator, Rodney R. McInnis, NMFS Southwest Regional Office, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS Southwest Regional Office and by e-mail to OIRA_Submission@omb.eop.gov, or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Heidi Hermsmeyer, NMFS SWR, 562-980-4036.

SUPPLEMENTARY INFORMATION: On September 30, 2011, NMFS published a proposed rule in the Federal Register (76 FR 560790) to revise regulations at 50 CFR part 300, subpart C, in order to implement certain decisions of the IATTC. The proposed rule was open to public comment through October 17, 2011. NMFS also published an Advanced Notice of Proposed Rulemaking (ANPR) in the Federal Register (76 FR 39808, July 7, 2011) to request public comment on implementing two of the three IATTC measures being implemented with this final rule.

Background on the IATTC

The IATTC was established under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna. In 2003, the IATTC adopted a resolution that approved the Convention for Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention Between the United States of America and the Republic of Costa Rica (Antigua Convention), a major revision of the 1949 Convention. The Antigua Convention entered into force on August 27, 2010. The objective of the Antigua Convention is to ensure the long-term conservation and sustainable use of fish stocks covered by this Convention. The IATTC

Convention Area (Convention Area) includes the waters bounded by the coast of the Americas, the 50° N. and 50° S. parallels, and the 150° W. meridian.

As a Contracting Party to the 1949 Convention and a member of the IATTC, the United States is legally bound to implement the decisions of the IATTC. The Act (16 U.S.C. 951-961) authorizes the Secretary of Commerce, after approval of IATTC recommendations by the Secretary of State, to promulgate such regulations as may be necessary to carry out the obligations of the United States. The authority to promulgate regulations has been delegated to NMFS.

The IATTC convened its 82nd Meeting in July 2011 and adopted by consensus twelve new resolutions. This final rule implements the following three resolutions adopted by the IATTC at the 82nd Meeting: the Resolution on a Multiannual Program for the Conservation of Tuna in the Eastern Pacific Ocean in 2011-2013 (C-11-01); the Resolution Prohibiting Fishing on Data Buoys (C-11-03); and the Resolution on the Conservation of Oceanic Whitetip Sharks Caught in Association with Fisheries in the Antigua Convention Area (C-11-10). All of the other resolutions that were adopted in 2011 either do not require further rulemaking or will be implemented in one or more separate subsequent rulemakings. All active resolutions and recommendations are available on the following IATTC website:

<http://www.iattc.org/ResolutionsActiveENG.htm>.

Changes to Tuna Conservation Measures for 2011-2013

Resolution C-11-01 is very similar to the tuna conservation measure adopted by the IATTC in 2009 (Resolution C-09-01). NMFS implemented Resolution C-09-01 at 50 CFR part 300, subpart C (74 FR 61046, November 23, 2009). Similar to Resolution C-09-01, the main objectives of Resolution C-11-01 are to not increase the fishing mortality of yellowfin tuna

(Thunnus albacares) and to reduce the fishing mortality of bigeye tuna (Thunnus obesus) in the Convention Area over the period 2011-2013.

NMFS is reducing the duration of the closure period of the Convention Area for tuna purse seine vessels class sizes 4-6 (182 metric tons carrying capacity or greater) in 2011 from 73 days, which was established under Resolution C-09-01, to 62 days, which was established under Resolution C-11-01, and continuing the closure period of 62 days in the years 2012 and 2013. The shorter closure period was agreed to by the members of the IATTC based on the 2011 bigeye and yellowfin tuna stock assessments. NMFS is also giving applicable purse seine vessel owners the ability to choose between the two possible closure periods established by the IATTC for 2012 and 2013. In 2009, 2010, and 2011, NMFS chose the later closure period for the entire U.S. purse seine fleet based on historical fishing operations; however, other members of the IATTC are allowing vessel owners to choose between the two closure periods to give fleets greater flexibility. In order to give comparable flexibility to the U.S. fleet, NMFS is providing this choice to the U.S. fleet as well in 2012 and 2013. Therefore, vessel owners of purse seine vessels that are subject to these requirements will be required by July 1, 2012, and July 1, 2013, to notify the NMFS Southwest Regional Administrator of his or her choice of closure period for the year. The two options are July 29 to September 28, or November 18 to January 18 of the following year for 2012 and 2013. This option is not available for 2011 since the earlier closure period has already passed. If a vessel owner fails to notify the Regional Administrator of his or her choice by the July 1 deadline for each year, the vessel will be subject to the later closure period (November 18 to January 18 of the following year) by default.

The high seas time/area closure for tuna purse seine vessels class sizes 4-6 will also continue to be in effect in 2012 and 2013. The area consists of the area bounded at the east and

west by 96° and 110° W. longitude and bounded at the north and south by 4° N. and 3° S. latitude. The high seas time/area closure was originally established under Resolution C-09-01 and has been in place since 2009.

In addition, NMFS is extending in 2012 and 2013 the annual bigeye tuna quota of 500 metric tons applicable to the bigeye catch in the Convention Area by U.S. longline vessels over 24 meters in overall length in accordance with the requirements in Resolution C-11-01. This quota has been in place since 2009 and has never been reached or exceeded. The members of the IATTC agreed to continue the bigeye tuna quotas in the Convention Area after review and analysis of the 2011 bigeye and yellowfin tuna stock assessments.

NMFS is also renewing the tuna retention program that requires all bigeye, skipjack, and yellowfin tuna caught by a U.S. purse seine vessel of class sizes 4-6 be retained on board and landed, except fish deemed unfit for human consumption for reasons other than size. The single exemption to this provision is the final set of a trip, when there may be insufficient well space remaining to accommodate all the tuna caught in that set. This measure is meant to reduce discards of juvenile (undersized) bigeye, yellowfin, and skipjack tunas that are often caught by purse seine vessels that fish on fish aggregating devices (FADs), reduce overall catches of bigeye tuna, and provide an incentive to fishermen to avoid large catches of juvenile bigeye tuna. The catch retention requirement will go into effect on January 1, 2012, and remain in effect unless the members of the IATTC agree to remove the measure in 2013 or beyond. NMFS is proposing to not include an expiration date for this requirement because NMFS expects it to be included by the IATTC in future tuna conservation and management resolutions. If a decision is made to remove the measure, NMFS will take appropriate action to remove the regulation.

Prohibition on Fishing Around Data Buoys

The Resolution Prohibiting Fishing on Data Buoys (Resolution C-11-03) was adopted to reduce vandalism and damage to data buoys caused by fishing vessels that often leads to loss of data critical to weather forecasting, tsunami warnings, search and rescue efforts, and research of the marine environment. Resolution C-11-03 defines data buoys as floating devices, either drifting or anchored, that are deployed by governmental or recognized scientific organizations or entities for the purpose of electronically collecting environmental data, and not in support of fishing activities.

This rule prohibits all U.S. fishing vessels that are used to target HMS in the Convention Area from interacting with data buoys. According to Resolution C-11-10, interactions include, but are not limited to, encircling the buoy with fishing gear, tying up to or attaching the vessel, fishing gear, or any part or portion of the vessel to a data buoy, or cutting its anchor line. In addition, this rule prohibits all U.S. longline and purse seine vessels that are used to fish for HMS in the Convention Area from using fishing gear within one nautical mile of an anchored data buoy. The one-nautical-mile distance will be measured from the data buoy to the nearest portion of the vessel or items associated with the vessel, such as gear or watercraft deployed by the fishing vessel, to the data buoy. These measures only apply to data buoys that have been identified to the IATTC. In addition, the website of NOAA's National Data Buoy Center (NDBC) at <http://www.ndbc.noaa.gov/> contains detailed information regarding data buoys maintained by NDBC and its partner organizations, including location and owner information. The website of the Observing System Monitoring Center, maintained by NOAA's Office of Climate Observations at <http://osmc.noaa.gov/Monitor/OSMC/OSMC.html>, also provides information regarding the location of data buoys. The Western and Central Pacific Fisheries Commission (WCPFC) also adopted a similar measure in December 2009 (CMM 2009-05) and

issued an information package on May 18, 2010, that provides sample information on the type of data buoys that may be encountered by fishermen. The information package is available on the WCPFC's website at <http://www.wcpfc.int/conservation-and-management-measures>. The prohibition does not apply if the fishing vessel is operating as part of a scientific research program that notified the IATTC of its intent, or is conducting work on behalf of the IATTC.

Other requirements include prohibiting U.S. fishing vessels used to target HMS in the Convention Area from taking onboard a data buoy unless specifically authorized or requested to do so by the entity responsible for the data buoy, requiring U.S. fishing vessels used for fishing for HMS in the Convention Area that become entangled with data buoys to remove the entangled fishing gear with as little damage to the data buoy as possible, and requiring vessels to take all reasonable measures to avoid fishing gear entanglement or directly interacting in any way with drifting data buoys. NOAA has also previously issued news releases asking the fishing, shipping, and boating communities to protect data buoys voluntarily by taking specific steps, such as: never boarding or tying up to a buoy; never fishing around or under a buoy; and giving the buoy a wide berth to avoid entangling the mooring or other equipment suspended from the buoy – 500 yards for vessels which are trailing gear and at least 20 yards for all others.

Conservation of Oceanic Whitetip Sharks

The Resolution on the Conservation of Oceanic Whitetip Sharks Caught in Association with Fisheries in the Antigua Convention Area (Resolution C-11-10) was adopted to reduce the fishing pressure on oceanic whitetip sharks (*Carcharhinus longimanus*), which are caught incidentally and targeted in some oceanic and coastal fisheries. During the IATTC's 82nd Meeting, IATTC scientific staff showed estimates illustrating a dramatic decline in the catch per

unit of effort of this species, which may be indicative of a decline in the population of this species in the EPO.

This rule prohibits all U.S. vessels targeting HMS in the Convention Area from retaining onboard, transshipping, landing, storing, selling, or offering for sale any part or whole carcass of oceanic whitetip sharks. All applicable U.S. vessels are required to release unharmed, to the extent practicable, oceanic whitetip sharks when brought alongside the vessel. Members and cooperating non-members of the IATTC are required to implement Resolution C-11-10 by January 1, 2012.

Technical Correction to Vessel Capacity Regulations

This rule also makes a technical change to § 300.22(b)(7)(ii) to reflect changes made in a previous rulemaking on vessel capacity. The total capacity limitation for the U.S. purse seine fishery in the Convention Area is 31,775 cubic meters, but NMFS inadvertently failed to state that number into this paragraph when the change was made in § 300.22(b)(4)(i)(A). NMFS is correcting this oversight in this rulemaking.

Response to Public Comments

NMFS received two public comments during the ANPR public comment period. One comment expressed general opposition to the action because it did not go far enough in terms of conservation and advocated banning all longline fishing and further restricting tuna fisheries beyond the scope of this action. In addition, the National Park Service, Pacific West Region, noted that they did not have comments on the subject action. NMFS also received one public comment during the proposed rule public comment period from NOAA Pacific Marine Environmental Laboratory (PMEL). Only one individual participated in the public hearing via teleconference and did not provide substantive comments.

Comment 1: The NOAA PMEL Tropical Atmosphere Ocean (TAO) project fully supports NOAA's planned implementation of the Resolution Fishing on Data Buoys (C-11-03) in the IATTC Convention Area. The eastern tropical Pacific Ocean TAO data buoys experience the highest amount of damage due to fishing activity when compared to all other sites in the array. Loss of critical TAO data results in decreased ability to detect and forecast El Niño and La Niña, which degrades the accuracy of advisories issued for the protection of life and property. In addition, millions of taxpayer dollars are wasted on repairs or replacements to moorings damaged or lost by fishing activity. The benefits of this resolution to the nation in terms of public health and safety far outweigh any inconvenience resulting from the restriction of fishing activity around these crucial environmental measurement platforms.

Response: NMFS acknowledges this comment in support of the action.

Changes from the Proposed Rule

There were a few minor changes to the proposed regulatory text. The subject of the sentence at § 300.25(e)(4) regarding the oceanic whitetip shark provision, was changed from the vessel itself to the vessel crew, operator, or owner of the vessel given the nature of the provision. In addition, vessel length was clarified throughout the regulations to be "overall length," which is defined by the U.S. Coast Guard at 46 CFR 69.203 as the horizontal distance between the outboard side of the foremost part of the stern and the outboard side of the aftermost part of the stern, excluding rudders, outboard motor brackets, and other similar fittings and attachments. Finally, the option to mail in notification to the Regional Administrator of a chosen purse seine closure period was added to § 300.25(f)(ii)(3).

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the Tuna Conventions Act and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for the portion of the rule that is shortening the purse seine closure period in the Convention Area by 11 days. One purpose of this rule is to allow U.S. fishing vessel owners to maximize their fishing opportunities while still conserving and sustainably managing the bigeye tuna and yellowfin tuna fish stocks in the Convention Area consistent with U.S. obligations as a member of the IATTC. Currently, regulations prohibit purse seine vessels of class size 4–6 (more than 182 metric tons carrying capacity) from fishing in the Convention Area from November 7, 2011, to January 18, 2012. However, these regulations amend current regulations to delay the start date of the purse seine closure period to November 18, 2011, consistent with Resolution C-11-01. If this rule is not effective for 30 days, then U.S. fishing vessels will lose the additional fishing opportunities afforded them through the agreement made at the 82nd IATTC Meeting. Because the delay would undermine the purpose of this rule, and would prevent U.S. fishermen from using the additional fishing days to maximize their fishing opportunities, the delay in effectiveness is contrary to the public interest. Accordingly, there is good cause to waive the 30-day delay in effectiveness for the regulations at § 300.24(m) and (n) and § 300.25(f), which will become effective immediately, while all other regulations being issued will become effective 30 days after publication of this final rule.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the IRFA and a summary of the analyses completed to support the action. A copy of this analysis is available from NMFS (see ADDRESSES).

Data Buoy and Oceanic Whitetip Shark Measures

The data buoy and oceanic whitetip shark provisions in the rule apply to owners and operators of U.S. vessels targeting HMS in the Convention Area, including, longline, purse seine, troll and baitboat, drift gillnet, harpoon, and commercial passenger fishing vessels. All of these vessels are considered small business entities under the Regulatory Flexibility Act (RFA) (i.e., they have annual gross revenues of less than \$4 million) except for the large purse seiners. Some of the data buoy provisions also specifically apply to longline and purse seine vessels. However, in the case of the data buoy provisions, it is unlikely that this rulemaking will result in a significant change in fishing operations, as NMFS is unaware of U.S. fishing vessels interacting with data buoys in the Convention Area in the past, or U.S. longline or purse seine vessels deploying gear within one nautical mile of anchored data buoys in the Convention Area. If, in the past, there have been vessels fishing within one nautical mile of anchored data buoys, the longline and purse seine measures could result in some negligible affects to the operating costs of vessels in terms of a potential increase in search time if there is less fishing success when not fishing around anchored buoys. Also, such vessels are required to avoid fishing in areas where anchored data buoys are located, which could slightly reduce the available fishing grounds and could cause some shift in the spatial distribution of fishing effort. Operators and crew are also required to take additional precautions when encountering data buoys anywhere in the Convention Area, which could create new burdens that could increase operating costs by increasing the time spent at sea. For example, the operator and crew of any vessel that has gear

that becomes entangled with a data buoy will need to make sure to disentangle the gear carefully, in order to cause as little damage to the data buoys as possible. However, since the measures are limited to fishing around anchored data buoys and longline and purse seine vessels can still fish in essentially the same fishing grounds as long as they avoid the circular 3.14 nm² prohibited fishing zone around each anchored data buoy, it is likely that there will be no real changes in fishing operations or associated revenues.

The longline and purse seine fleets that currently fish around anchored data buoys could also see some change in the composition of their catch due to no longer being allowed to fish around anchored data buoys that can act as fish aggregating devices; however, this is rather unlikely. This provision could lead to an increase in the proportion of yellowfin tuna and a decrease in the proportion of bigeye tuna, skipjack tuna, and other species that tend to be caught around floating objects. Some studies suggest that seabirds, sea turtles, and marine mammals aggregate in association with floating objects, so there could be some minor beneficial effects on protected resources from implementation of the rule. However, this impact is difficult, if not impossible, to estimate and in all likelihood there will not be changes in fishing operations and catch compositions resulting from the rule. In addition, purse seine vessels still can fish using FADs that they deploy and it is presumed that longline vessels tend to avoid fishing in close proximity to anchored buoys to prevent damage and entanglement of gear.

NMFS compared the effects of the data buoy provisions in this rule to one alternative, which is a no action alternative. Under this alternative, there would be no changes to current regulations that do not prohibit U.S. vessels targeting HMS in the Convention Area from interacting with data buoys as stipulated in Resolution C-11-03. Under this alternative, there would be no effects to vessel owners compared to the status quo. Vessel owners would

potentially benefit from not implementing the data buoy provisions; however, the United States would not be implementing Resolution C-11-03 and would therefore not be satisfying its international obligations as a member of the IATTC.

The oceanic whitetip shark conservation measures are also unlikely to result in changes to fishing operations or significant economic impacts to small entities as U.S. fisheries that target HMS rarely retain, transship, land, or sell this species in the Convention Area. The Hawaii longline fishery (both deep-set and shallow-set sectors) catches the majority, if not all, of the oceanic whitetip sharks caught by U.S. fisheries that target HMS in the Convention Area. According to observer data from 1995-2010 for the U.S. longline fleet based out of Hawaii, the majority (90.1 percent) of observed sets caught zero oceanic whitetip sharks. On average, 0.141 oceanic whitetip sharks were caught per set during the same time period. Since 2000, there has been a national ban on shark finning, which has greatly increased the number of sharks, including oceanic whitetip sharks, that are released after being caught. From 2004-2006, only 4.9 percent and 1.7 percent of the oceanic whitetip sharks that were caught were retained in the deep-set and shallow-set longline fisheries, respectively. The overwhelming majority of the oceanic whitetip sharks (99.3 percent) caught on observed fishing trips in this fishery are caught outside of the Convention Area, west of 150° W. longitude. Thus, the prohibition is expected to result in no change in fishing operations and only a de minimis reduction in associated revenues.

NMFS compared the effects of the oceanic whitetip provisions to one alternative, which is a no action alternative. Under this alternative, there would be no changes to current regulations in order to prohibit U.S. vessels targeting HMS in the Convention Area from retaining onboard, transshipping, landing, storing, selling, or offering for sale any part or whole carcass of oceanic whitetip shark, as stipulated in Resolution C-11-10. Under this alternative, there would be no

effects to vessel owners compared to the status quo. Vessel owners would potentially benefit from not implementing the oceanic whitetip provisions; however, the United States would not be implementing Resolution C-11-10 and would therefore not be satisfying its international obligations as a member of the IATTC.

In summary, all entities that have the potential to be affected by the data buoy and oceanic whitetip shark measures are believed to be small entities except the large purse seine vessels; however, it is likely that none of these entities will be significantly impacted by the rule as fishing operations and revenues will most likely remain the same.

Tuna Conservation Measures

The tuna conservation measures affect longline vessels over 24 meters overall length and U.S. purse seine vessels class sizes 4-6 fishing for yellowfin, bigeye, and skipjack tunas in the Convention Area. This rule makes only slight adjustments to the existing tuna conservation measures, and extends the effective period for two additional fishing years; thus impacts to vessel owners are expected to be minimal. The bigeye tuna quota in the longline fishery will remain at 500 mt and remain in force for 2012 and 2013. This quota has not been reached in 2009 or 2010 and it is not expected to be reached in 2011. In addition, the purse seine closure in the Convention Area will be shortened by 11 days in 2011 and will remain in force for 2012 and 2013. Additionally, the purse seine vessel owners will be given a choice as to when to implement the closure giving them greater flexibility while maintaining the same level of conservation, the high seas purse seine time/area closure will remain in force for 2012 and 2013, and the tuna catch retention measures will be extended to 2012 and beyond.

NMFS compared the effects of the tuna conservation measures in this rule to one alternative, which is a no action alternative. Under this alternative, there would be no changes to

current regulations to continue the bigeye tuna quota in 2012 and 2013 in the longline fishery, no changes to the purse seine closure periods, no option to select a preferred closure period, and no extension of the tuna retention measures as stipulated in Resolution C-11-01. Under this alternative, the longline and purse seine fisheries operating in the Convention Area would maintain the status quo. The longline vessel owners would benefit from not continuing the bigeye tuna quota; however, since this quota has not been reached in the past, the effects would likely be similar to the measures being implemented. The purse seine vessel owners would be disadvantaged by not shortening the purse seine closure period in the Convention Area by 11 days in 2011 and not giving them the option to choose a preferred closure period; however, they would benefit if the closure period in the Convention Area and the high seas time/area closure were not continued in 2012 and 2013 and the tuna retention measures were not continued in 2012 and beyond. Under this alternative, the United States would not be fully implementing Resolution C-11-01 and would therefore not be satisfying its international obligations as a member of the IATTC.

The total number of affected longline vessels is approximated by the average number of U.S. longline vessels greater than 24 meters in overall length (large-scale longline vessels) that have caught bigeye tuna in the Convention Area in 2005-2010. In each of the years 2005 through 2008, the number of large-scale longline vessels that caught bigeye in the Convention Area was 18, 8, 18, and 30, respectively. Thus, approximately 19 longline vessels on average have the potential to be affected by this rule. The majority of the longline vessels that may be affected by this rule are based out of Hawaii and American Samoa. There is also one longline vessel based out of California that is affected by the rule. These longline vessels target bigeye tuna using deep

sets, and during certain parts of the year, portions of the Hawaii and American Samoa fleet target swordfish using shallow sets.

Most of the Hawaii and American Samoa fleets' fishing effort has traditionally been outside of the Convention Area in the western and central Pacific Ocean (WCPO), but fishing has also taken place in the EPO. The proportion of the large-scale longline vessels annual bigeye tuna catches that were captured in the EPO from 2005 through 2009 ranged from about 5 percent to 26 percent, and averaged 19 percent. As an indication of the size of businesses in the fishery, average annual fleet-wide ex-vessel revenues during 2005-2009 were about \$63 million. Given the number of vessels active during that period (128, on average), this indicates an average of about \$490,000 in annual revenue per vessel. All of the businesses affected by the longline measures are considered small business entities.

For the purpose of projecting baseline conditions for the longline fishery under no action, this analysis relies on fishery performance from 2005 through 2010, since prior to 2005 the longline fishery regulations underwent major changes (the swordfish-directed shallow-set longline fishery was closed in 2001 and reopened in 2004 with limits on fishing effort and turtle interactions). Large-scale longline vessels fishing in the Convention Area caught about 166, 51, 118, 325, 204, and 408 mt of bigeye tuna in 2005-2010, respectively. Thus, it is unlikely that the limit will be reached in 2011-2013.

In summary, all entities affected by the bigeye quota in longline fisheries are believed to be small entities, so small entities will not be disproportionately affected relative to large entities. In addition, this part of the rule is not likely to have a significant impact on a substantial number of small entities because it is unlikely that the bigeye landings limit for large-scale longline vessels will be reached in any given year.

The total number of affected purse seine vessels is approximated by the current number of U.S. purse seine vessels class size 4-6 authorized to fish in the Convention Area. As of October 18, 2011, there were eleven U.S. purse seine vessels listed on the IATTC Vessel Register; five are class size 6 (greater than 363 mt carrying capacity), one is class size 5 (273 - 363 mt carrying capacity), and five are class sizes 1-3 (less than 182 mt carrying capacity). Thus six purse seine vessels may be affected by the rule in the near future since these regulations only apply to purse seine vessels class size 4-6. There is also the potential for other U.S. purse seine vessels based out of the WCPO to become authorized to fish in the EPO; however, there are capacity limits on purse seine vessels fishing in the EPO and it is estimated that at a maximum 15 additional vessels could be added to the current authorized list of active purse seine vessels. Purse seine vessels class sizes 5 and 6 usually fish outside U.S. waters and deliver their catch to U.S. (e.g., American Samoa) or foreign (e.g., Ecuador, Mexico, Colombia, Costa Rica) ports. Skipjack and yellowfin tuna are the primary target species in the purse seine fishery, and bigeye tuna is incidentally targeted. Class size 6 vessels are required to have 100 percent observer coverage, while class size 5 vessels are not required to carry an observer. Purse seine vessels class size 5 or smaller are considered small business entities. It is estimated that from 2004-2010, the majority, if not all, class size 5 U.S. purse seine vessels have had revenues of less than \$0.5 million per year. Class size 6 vessels are categorized as large business entities (revenues in excess of \$4 million per year). A large purse seine vessel typically generates about 4,000 to 5,000 mt of tuna valued at about \$4 to \$5 million per year.

It is estimated that purse seine sets will be prohibited for 17 percent of the year in 2011-2013 (62 day closure/365 days), thus catches could be negatively affected unless effort is shifted to areas outside of the Convention Area during the closure period, or to different times of the

year when there is no closure. The affected vessels are capable of fishing outside of the closure area (i.e., in the WCPO) during the closure period and/or for the remainder of the year, since the fishery continues year round in the EPO, and vessels tend to use relatively short closures (such as these) for regular vessel maintenance. Fishing in the WCPO may produce additional costs to some of the affected vessels that are based out of the U.S. West Coast and primarily fish in the EPO due to the increase in costs associated with fishing further away from port. In addition, there is a FAD purse seine closure period in the WCPO from July 1 to September 30 in 2011 that further constrains purse seine fishing effort in the WCPO. The closure may be extended into 2012 and beyond, depending on the tuna conservation and management measures that are adopted by the WCPFC at their annual meeting in December 2011.

Other factors that have the potential to inhibit these vessels from fishing outside of the Convention Area include licensing availability and costs, and effort limits for purse seine vessels fishing in the WCPO. It is assumed that fishing in the WCPO is the only practical geographic alternative for these vessels. Purse seine vessels fishing in the WCPO under the South Pacific Tuna Treaty (SPTT) are required to license their vessels; the maximum number of licensed vessels allowed in the U.S. purse seine fishery in the WCPO is 40 and currently there are 37 licensed vessels as of September 2011. The vessel registration fee is about \$3,250 per vessel. The five class size 6 purse seine vessels that are authorized to fish in the Convention Area are already registered under the SPTT. It may not be economically viable for the class size 5 purse seine vessels to register under the SPTT and fish in the WCPO because of the smaller carrying capacity and the increased costs associated with fishing far from port.

In summary, one small business entity and five large business entities may be affected by the purse seine measures, thus small entities will not be disproportionately affected relative to

large entities. In addition, the purse seine closure periods are not likely to have a significant impact on a substantial number of small entities because only one small business entity may be affected and it is estimated that its fishing effort will not change significantly from the status quo.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by the Office of Management and Budget (OMB) under control number 0648-0387. Reporting burden for purse seine vessel owners or managers when providing written notification (via fax) to NMFS declaring which purse seine closure period he or she will be adhering to in 2012 and 2013, is estimated to be 10 minutes per response, which includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by e-mail to OIRA_Submission@omb.eop.gov, or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian federation, Transportation, Treaties, Wildlife.

Dated: October 31, 2011

Samuel D. Rauch III,
Deputy Assistant Administrator
For Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for 50 CFR part 300 continues to read as follows:

Authority: 16 U.S.C. 951-961 et seq.

2. In § 300.21, a definition of “Data buoy” is added, in alphabetical order, to read as follows:

§ 300.21 Definitions.

* * * * *

Data buoy means, for the purpose of § 300.25, a floating device, either drifting or anchored, which is deployed by one or more governmental or recognized scientific organizations or entities for the purpose of electronically collecting and measuring environmental data, and not

for the purpose of fishing activities, and which has been reported to the IATTC by a Member or Cooperating non-Member of the Commission.

* * * * *

3. In § 300.22, paragraph (b)(7)(ii) is revised to read as follows:

§ 300.22 Eastern Pacific fisheries recordkeeping and written reports.

* * * * *

(b) * * *

(7) * * *

(ii) A purse seine vessel may be added to the Vessel Register and categorized as active in order to replace a vessel removed from active status under paragraph (b)(5) of this section, provided the total carrying capacity of the active vessels does not exceed 31,775 cubic meters and the owner submits a complete request under paragraph (b)(7)(iv) or (b)(7)(v) of this section.

* * * * *

4. In § 300.24, paragraphs (e), (m) and (n) are revised, and new paragraphs (o) through (t) are added to read as follows:

§ 300.24 Prohibitions.

* * * * *

(e) Fail to retain any bigeye, skipjack, or yellowfin tuna caught by a fishing vessel of the United States of class size 4–6 using purse seine gear in the Convention Area as required under § 300.25(e)(1).

* * * * *

(m) Fail to stow gear as required in § 300.25(b)(4)(iv) or (f)(7).

(n) Use a fishing vessel of class size 4-6 to fish with purse seine gear in the Convention Area in contravention of § 300.25(f)(1), (f)(2), (f)(5), or (6).

(o) Use a U.S. longline or purse seine fishing vessel used to fish for HMS within one nautical mile of an anchored data buoy while the fishing vessel is in the Convention Area in contravention of § 300.25(g)(1).

(p) Use a U.S. fishing vessel used for fishing for HMS, or any gear, equipment, or watercraft deployed by such a fishing vessel, to interact with a data buoy in the Convention Area in contravention of § 300.25(g)(2).

(q) Remove from the water a data buoy and place it on board or tow a data buoy with a U.S. fishing vessel used for fishing for HMS while the vessel is in the Convention Area without authorization by the owner of the data buoy or the owner's authorized representative in contravention of § 300.25(g)(3).

(r) In the event of an entanglement of a data buoy with a U.S. fishing vessel, or its fishing gear, equipment, or associated watercraft, used for fishing for HMS in the Convention Area, fail to promptly remove the data buoy with as little damage to the data buoy and its mooring and anchor lines as possible, in contravention of § 300.25(g)(4).

(s) Fail to take all reasonable measures to avoid fishing gear entanglement or interaction with drifting data buoys in contravention of § 300.25(g)(5).

(t) Use a U.S. fishing vessel to fish for HMS in the Convention Area and retain onboard, transship, land, store, sell, or offer for sale any part or whole carcass of an oceanic whitetip shark (Carcharhinus longimanus) or fail to release unharmed, to the extent practicable, all oceanic whitetip sharks when brought alongside the vessel in contravention of § 300.25(e)(4).

5. In § 300.25, paragraphs (b), (e)(1), and (f) are revised, and new paragraphs (e)(4) and (g) are added to read as follows:

§ 300.25 Eastern Pacific fisheries management.

* * * * *

(b) Tuna quotas in the longline fishery in the Convention Area. (1) Fishing seasons for all tuna species begin on January 1 and end either on December 31 or when NMFS closes the fishery for a specific species.

(2) For each of the calendar years 2011, 2012, and 2013, there is a limit of 500 metric tons of bigeye tuna that may be captured and landed by longline gear in the Convention Area by fishing vessels of the United States that are over 24 meters in overall length.

(3) NMFS will monitor bigeye tuna landings with respect to the limit established under paragraph (b)(2) of this section using data submitted in logbooks and other available information. After NMFS determines that the limit in any year is expected to be reached by a specific future date, and at least 7 calendar days in advance of that date, NMFS will publish a notice in the Federal Register announcing that the limit has been reached and that the restrictions described in paragraph (b)(4) of this section will be in effect through the end of the calendar year.

(4) Once an announcement is made pursuant to paragraph (b)(3) of this section, the following restrictions will apply during the period specified in the announcement:

(i) A fishing vessel of the United States over 24 meters in overall length may not be used to retain on board, transship, or land bigeye tuna captured by longline gear in the Convention Area, except as follows:

(A) Any bigeye tuna already on board a fishing vessel upon the effective date of the prohibitions may be retained on board, transshipped, and/or landed, to the extent authorized by

applicable laws and regulations, provided that they are landed within 14 days after the prohibitions become effective.

(B) In the case of a vessel that has declared to NMFS, pursuant to § 665.23(a) of this title, that the current trip type is shallow-setting, the 14-day limit is waived, but the number of bigeye tuna retained on board, transshipped, or landed must not exceed the number on board the vessel upon the effective date of the prohibitions, as recorded by the NMFS observer on board the vessel.

(ii) Bigeye tuna caught by longline gear used on a vessel of the United States over 24 meters in overall length in the Convention Area may not be transshipped to a fishing vessel unless that fishing vessel is operated in compliance with a valid permit issued under § 660.707 or § 665.21 of this title.

(iii) A fishing vessel of the United States over 24 meters in overall length, other than a vessel for which a declaration has been made to NMFS, pursuant to § 665.23(a) of this title, that the current trip is shallow-setting, may not be used to fish in the Pacific Ocean using longline gear both inside and outside the Convention Area during the same fishing trip, with the exception of a fishing trip during which the prohibitions were put into effect as announced under paragraph (b)(3) of this section.

(iv) If a fishing vessel of the United States over 24 meters in overall length - other than a vessel for which a declaration has been made to NMFS, pursuant to § 665.23(a) of this title, that the current trip type is shallow-setting - is used to fish in the Pacific Ocean using longline gear outside the Convention Area and the vessel enters the Convention Area at any time during the same fishing trip, the longline gear on the fishing vessel must be stowed in a manner so as not to be readily available for fishing; specifically, the hooks, branch or dropper lines, and floats used

to buoy the mainline must be stowed and not available for immediate use, and any power-operated mainline hauler on deck must be covered in such a manner that it is not readily available for use.

* * * * *

(e) Bycatch reduction measures. (1) As of January 1, 2012, bigeye, skipjack, and yellowfin tuna caught in the Convention Area by a fishing vessel of the United States of class size 4–6 (more than 182 metric tons carrying capacity) using purse seine gear must be retained on board and landed, except for fish deemed unfit for human consumption for reasons other than size. This requirement shall not apply to the last set of a trip if the available well capacity is insufficient to accommodate the entire catch.

* * * * *

(4) The crew, operator, or owner of a fishing vessel of the United States used to fish for HMS in the Convention Area shall be prohibited from retaining onboard, transshipping, landing, storing, selling, or offering for sale any part or whole carcass of an oceanic whitetip shark (Carcharhinus longimanus) and must release unharmed, to the extent practicable, all oceanic whitetip sharks when brought alongside the vessel.

(f) Purse seine closures in the Convention Area. (1) A fishing vessel of the United States of class size 4-6 (more than 182 metric tons carrying capacity) may not be used to fish with purse seine gear in the Convention Area for 62 days in each of the years 2011, 2012, and 2013 during one of the following two periods:

(i) From 0000 hours on July 29 to 2400 hours on September 18, or

(ii) From 0000 hours on November 18 to 2400 hours on January 18 of the following year.

(2) For 2011, all U.S. purse seine vessels subject to the requirements under paragraph (f)(1) of this section shall adhere to the closure period under paragraph (f)(1)(ii) of this section.

(3) A vessel owner of a vessel that is subject to the requirements under paragraph (f)(1) of this section must in 2012 and 2013 provide written notification to the Regional Administrator declaring which one of the two closure periods identified in paragraph (f)(1) of this section to which his or her vessel will adhere in that year. This written notification must be submitted by fax at (562) 980-4047 or mail (see § 300.21 of this chapter) and must be received no later than July 1 in each of the years 2012 and 2013. The written notification must include the vessel name and registration number, the closure dates that will be adhered to by that vessel, and the vessel owner or managing owner's name, signature, business address, and business telephone number.

(4) If written notification is not submitted per paragraph (f)(3) of this section for a vessel subject to the requirements under paragraph (f)(1) of this section, that vessel must adhere to the closure period under paragraph (f)(1)(ii) of this section.

(5) A vessel of class size 4 (182 to 272 metric tons carrying capacity) may make one fishing trip of up to 30 days duration during the specified closure period, provided that the vessel carries an observer of the On-Board Observer Program of the Agreement on the International Dolphin Conservation Program during the entire fishing trip.

(6) A fishing vessel of the United States of class size 4-6 (more than 182 metric tons carrying capacity) may not be used from 0000 hours on September 29 to 2400 hours on October 29 in the years 2012 and 2013 to fish with purse seine gear within the area bounded at the east and west by 96° and 110° W. longitude and bounded at the north and south by 4° N. and 3° S. latitude.

(7) At all times while a vessel is in a Closed Area established under paragraphs (f)(1) or (f)(6) of this section, the fishing gear of the vessel must be stowed in a manner as not to be readily available for fishing. In particular, the boom must be lowered as far as possible so that the vessel cannot be used for fishing, but so that the skiff is accessible for use in emergency situations; the helicopter, if any, must be tied down; and launches must be secured.

(g) Restrictions on fishing in proximity to data buoys. (1) A longline or purse seine fishing vessel of the United States may not be used to fish for HMS within one nautical mile of an anchored data buoy in the Convention Area. The one-nautical-mile distance shall be measured from the data buoy to the nearest portion of the fishing vessel or items associated with the fishing vessel, such as gear or watercraft deployed by the fishing vessel, to the data buoy. This prohibition shall not apply if and when the fishing vessel is operated as part of a scientific research program that has received specific authorization by the IATTC or is conducting work on behalf of the IATTC.

(2) A fishing vessel of the United States used to fish for HMS, or any fishing gear, equipment, or watercraft deployed by such a fishing vessel, may not be used to interact with a data buoy while the fishing vessel is in the Convention Area. Interact with a data buoy means to engage in conduct that could impair the functioning of a data buoy through actions that include but that are not limited to the following: encircling the buoy with fishing gear; tying up to or attaching the vessel, or any fishing gear, part or portion of the fishing vessel, including equipment such as watercraft, to a data buoy or its mooring; or cutting a data buoy anchor line.

(3) A vessel operator, crew member, or other persons on board a fishing vessel of the United States that is used to fish for HMS may not remove a data buoy or any parts thereof from the water and place it on board the fishing vessel or tow a data buoy when in the Convention

Area unless authorized to do so by the owner of the data buoy or an authorized representative or agent of the owner. When practicable, advance written authorization must be available onboard a U.S. fishing vessel that has taken on board or tows a data buoy. In all other cases, a written document (e.g., fax, email) verifying the authorization must be obtained by the vessel owner or operator within 15 days of landing.

(4) In the event that a fishing vessel of the United States that is used to fish for HMS or any of its fishing gear, equipment, or associated watercraft, becomes entangled with a data buoy while the fishing vessel is in the Convention Area, the owner and operator of the fishing vessel must promptly remove the entangled fishing vessel, fishing gear, equipment, or associated watercraft with as little damage to the data buoy and its mooring and anchor lines as possible.

(5) A vessel operator, crew member, or other persons on board a fishing vessel of the United States that is used to fish for HMS must take all reasonable measures to avoid fishing gear entanglement or interaction with drifting data buoys.

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